

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6257 of 1996

with

SPECIAL CIVIL APPLICATION No 6258 of 1996

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Points Nos. 1 to 5 - No.

GULABSINH M CHAUHAN

Versus

DIRECTOR OF TECHNICAL EDU.

Appearance:

1. Special Civil Application No. 6257 of 1996
MR YN OZA for Petitioner
SERVED for Respondent No. 1
M/S PATEL ADVOCATES for Respondent No. 2
MR DA BAMBHANIA for Respondent No. 3
2. Special Civil Application No. 6258 of 1996
MR YN OZA for Petitioner
M/S PATEL ADVOCATES for Respondent No. 1
MR DA BAMBHANIA for Respondent No. 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 15/04/97

ORAL JUDGEMENT

Petitioners in both the above-referred petitions were appointed as Demonstrators in LM College of Pharmacy in the years 1958 and 1957 respectively. The petitioner in Spl.C.A.No.6257/96 having reached the age of superannuation was retired from service with effect from 31st December, 1992. The petitioner in Special Civil Application No.6258/96 having reached the age of superannuation was retired from service on 14th June, 1996.

It is the grievance of both these petitioners that though they have retired from service upon reaching the age of superannuation after rendering satisfactory service for more than 35 years, their retiral benefits are not finalized and are not being paid to them. On perusal of the orders sanctioning provisional pension made on 30th May, 1994 and 6th June, 1996 respectively, it appears that the pay fixation of both the petitioners has not been finalized and as a result an order has been made sanctioning provisional monthly pension of Rs.2200/and a sum of Rs.50,000/- has been paid by way of provisional death-cum-retirement gratuity.

None of the learned Advocates appearing for the respondents is present. The respondents have not filed any affidavit justifying the delay caused in finalizing the pension papers of the petitioners herein. There does not seem to be any dispute that both the petitioners are entitled to pension and other retirement benefits. However, for the reasons best known to the respondents the matter of pay fixation of the petitioners has not been finalized which has resulted into delay in finalizing the retiral benefits of the petitioners. It is a settled proposition of law, that right to receive pension is a fundamental right earned by rendering services. Said right cannot be infringed or abrogated except in accordance with law.

In the present case, the respondents have not urged that the petitioners are not entitled to such benefits. In the circumstances, these petitions are allowed. The directions are issued as under:

- (a) The respondent No.1 shall finalize the matter of pay fixation of both the petitioners herein within a

period of two months from the date of receiving a copy of this order. In the event the matter of pay fixation is not finalized, within two months as directed hereinabove, the last pay received by both the petitioners shall be considered to be their final pay and shall be taken as the basis for computation of retiral benefits admissible to each of the petitioners.

(b) The respondent No.3 shall finalize the pension papers of both the petitioners herein within two months from the date of pay fixation made by the respondent No.1.

(c) The last pay receivable by the petitioners in accordance with the order of pay fixation made by respondent No.1 shall be taken as basis for computation of retiral benefits admissible to the petitioners. In absence of such fixation made by the respondent No.1 the last pay actually received by each of the petitioners shall be the basis for computation of retiral benefits admissible to the petitioners. Necessary order sanctioning such retiral benefits shall be made as soon as possible however not beyond four months from the date of receipt of copy of this order.

(d) Petitioners shall be entitled to interest on these amounts of retiral benefits due and payable to them at the rates determined by the Government for such delayed payment.

These petitions are allowed to the aforesaid extent. Rule is made absolute.

Respondent No.1 shall pay costs of these petitions to each of the petitioners. The cost in each petition is quantified at Rs.2,500/- (Two thousand five hundred). The respondents Nos.2 & 3 shall bear their own costs.
